

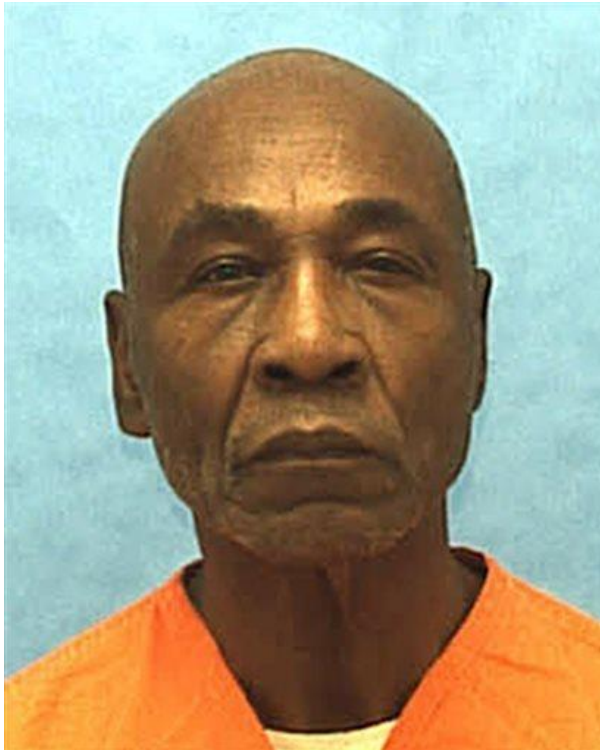
High court looks at death row inmate with low IQ

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This undated photo made available by the Florida Department of Corrections shows inmate Freddie Lee Hall. Hall. The Supreme Court will hear an appeal on Monday, March 3, 2014 from Hall, a Florida death row inmate who claims he is protected from execution because he is mentally disabled. The case centers on how authorities determine who is eligible to be put to death, 12 years after the justices' prohibited the execution of the mentally disabled. The court has until now left it to the states to set rules for judging who is mentally disabled. In Florida and a handful of other states, an intelligence test score higher than 70 means an inmate is not mentally disabled, even if other evidence indicates he is. Hall has scored above 70 on most of the IQ tests he has taken since 1968. FLORIDA DEPARTMENT OF CORRECTIONS, HO — AP Photo

WASHINGTON — A Floridian with an IQ as high as 75 may be diagnosed as mentally disabled and be eligible for help getting a job. But on death row, the state says having an IQ higher than 70 categorically means an inmate is not mentally disabled and may be executed.

The Supreme Court barred states from executing mentally disabled inmates in 2002, but until now has left the determination of who is mentally disabled to the states.

In arguments Monday, 68-year-old Florida inmate Freddie Lee Hall is challenging the state's use of a rigid IQ cutoff to determine mental disability.

Florida is among a few states that use a score of 70, as measured by IQ tests, as the threshold for concluding an inmate is not mentally disabled, even when other evidence indicates he is.

"Simply put, IQ tests are not a perfect measure of a person's intellectual ability," Hall's lawyers told the court in written arguments.

In nine tests administered between 1968 and 2008, Hall scored as low as 60 and as high as 80, with his most recent scores between 69 and 74, according to the state.

A judge in an earlier phase of the case concluded Hall "had been mentally retarded his entire life." Psychiatrists and other medical professionals who examined him said he is mentally disabled.

As far back as the 1950s, Hall was considered "mentally retarded" — then the commonly accepted term for mental disability — according to school records submitted to the Supreme Court.

He was sentenced to death for murdering Karol Hurst, a 21-year-old pregnant woman who was abducted leaving a Florida grocery store in 1978.

Hall also has been convicted of killing a sheriff's deputy and has been imprisoned for the past 35 years. He earlier served a prison term for assault with intent to commit rape and was out on parole when he killed Hurst.

Hall's guilt is not at issue before the high court.

Florida's regulatory code says individuals with IQs as high as 75 may be diagnosed as mildly intellectually disabled, potentially allowing them to receive state aid. The code relies on the Diagnostic and Statistical Manual of Mental Disorders, the authoritative manual of the American Psychiatric Association, setting an IQ of 70, plus or minus 5, as the upper range of intellectual disability.

The range reflects something that is true of all standardized testing — results are generally reliable, but not 100 percent so, and they are reported along with a margin of error.

Psychiatrists and psychologists who are supporting Hall also say that an IQ test alone is insufficient for a diagnosis of mental disability. The groups say there's a consensus among the mental health professions that an accurate diagnosis also must include evaluating an individual's ability to function in society, along with finding that the mental disability began in childhood.

But the Florida Supreme Court has ruled that the state law regarding executions and mental disability has no wiggle room if an inmate tests above 70.

In defending Hall's death sentence, the state says it makes sense to set a different threshold for vocational services than for criminal justice.

Providing treatment to a broader group makes sense, Florida Attorney General Pamela Jo Bondi said in court papers. But for death row inmates, "the risk of overdiagnosis of mental retardation is particularly pronounced," Bondi said. They "have every incentive to secure such a diagnosis, and the risk of malingering is very real," she said.

The outcome of Hall's case is unlikely to affect the busiest death penalty state, Texas, which does not impose a rigid IQ test to assess mental disability. Hall's lawyers, in fact, approvingly cite Texas' broader approach to the issue.

Florida said there's no national consensus about a strict IQ limit, and no reason for the court to impose one.

The two sides disagree about the precise number of states that employ rigid cutoffs. The state calls attention to Florida Supreme Court Justice Barbara Pariente's opinion in 2012 that identified eight other states that have such a limit: Arkansas, Delaware, Idaho, Kentucky, North Carolina, Tennessee, Virginia and Washington.

Hall's lawyers argued that only in five states — Florida, Alabama, Idaho, Kentucky and Virginia — have state courts held that inmates with IQs higher than 70 cannot be considered mentally disabled. Even in Idaho, the ruling appears to give judges some leeway, Hall's lawyers said.

Hall's case has bounced around the Florida courts for decades.

In 1989, the state Supreme Court threw out Hall's original death penalty and ordered a new sentencing hearing. A judge then resentenced Hall to death but declared that Hall was mentally disabled. That took place before the 2002 U.S. Supreme Court ruling that said executing a mentally disabled inmate violates the Eighth Amendment's ban on cruel and unusual punishment, and before Florida passed a law setting the IQ limit.

The Florida Supreme Court's most recent ruling upholding Hall's death sentence was by a 4-2 vote.

It included a dissent by Justice James Perry that noted that the testing below 70 is no guarantee of escape from the death penalty. Perry said the state court has upheld death sentences for inmates with IQs below 70 if other evidence indicates they are not mentally disabled. In one case, the inmate was able to obtain a GED diploma and live independently, Perry said. In another, the prisoner could copy letters written by others, sign his own name and work as a cook, garbage collector and dish washer, he said.

The case is Hall v. Florida, 12-10882.

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